



KEMPSEY
Shire Council

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

9th May 2006

**DSDS2 PROPOSED DEVELOPMENT OF SIX
RESIDENTIAL UNITS
35 MCINTYRE STREET, SOUTH WEST ROCKS
FILE: T6-06-98 GGL {Folio No. * }**

SUMMARY:

Reporting that Council has received a Development Application to, erect a residential flat building containing six units which requires a variation to Kempsey Local Environment Plan, 1987 and Development Control Plan 22. There have been three (3) objections received for the proposed development.



Applicant: Alan Rudge Architects
Subject Property: Lot 296 DP754396 No 35 McIntyre Street,
 South West Rocks
Zone: 2 (c) (Residential "C" Zone)

BACKGROUND:

At its meeting 14 November 2004 Council approved the erection seven residential units on the subject site, subject to conditions of consent and Council receiving a State Environmental Planning Policy (SEPP) 65 Design Verification from a practicing architect. The applicant did not submit the requested SEPP 65 Design Verification which consequently led the owner to submit a new development application for an amended proposal.

The site has an existing dwelling located on it and Development Consent T6-05-23 was granted in July 2005 for its demolition.

Description of Development

The proposal consists of 6x3 bedroom dwellings. Dwelling 1 and 2 are 2 storey "Townhouse style" units fronting McIntyre Street. Dwellings 3 and 5 are ground level units, while dwellings 4 and 6 are located

above these, at first floor level. The land falls about 4metres from the front to the rear boundary. A basement level carpark provides off street parking spaces plus individual storage bays for each dwelling. Access to the car parking is via a ramp from McIntyne Street. The proposal incorporates two swimming pools and communal barbecue area.

Planning Report

The proposal has been examined having regard for the Heads of Consideration identified under Section 79 C (1) of the Environmental Planning and Assessment Act 1979 with the following matters considered to be of particular relevance to the proposal.

Kempsey Local Environmental Plan 1987 (KLEP 1987)

The proposed development is defined as a "residential flat building" under KLEP 1987 and is permissible with Council's consent under the 2(a) (Residential "C" Zone).

Clause 24 provides that Council shall not grant consent to a building which contains more than two storeys, or having a topmost floor with a ceiling level of more than 6.2metres above natural ground level. The development comprises a three (3) storey building and consequently requires an objection pursuant to State Environmental Planning Policy No 1 – Development Standards.

Environmental Planning Policy No 6 – Number of storeys

Pursuant to State Environmental Planning Policy No 6 - Number of Storeys in a Building, the building is defined as a three storey building as the proposed underground car park and ancillary storage area would be a "storey" under the Policy.

State Environmental Planning Policy No 1

The applicant seeks council's agreement to the use of SEPP 1 to vary the 2 storey building height limit.

In considering a SEPP1 objection, Council must consider:

- a. What is the underlying objective of the standard?
The Two storey and 6.2metre height limits are considered to have the following objectives:
 - i) Maintain existing low rise character
 - ii) Limit overshadowing
 - iii) Protect privacy between development
 - iv) Limit impact on views from adjoining properties

Whilst the development presents as 2-storey to the McIntyre Street frontage, due to the fall of the land the rear elevation,

which fronts an unformed section of Orara Street, will appear as an elevated 2 storey building as the basement level will project about 2.1metres above natural ground level.

The topmost ceiling level is 7.5metres above natural ground level. This occurs in the rear half of the development. This cannot be seen from the McIntyre Street frontage. The impact of this height of the building is limited to additional overshadowing of neighboring properties, and increased bulk and appearance.

- b. Is compliance with the standard unreasonable or unnecessary in the circumstances?

In relation to the two storey limit it is only the basement carpark that causes the development to be non compliant. The carpark is primarily below natural ground level and if the height of the building otherwise complied, it maybe reasonable to allow the development.

In relation to the 6.2metres height limit, it should be noted that the proposal does not satisfy Council's recently adopted Height of Buildings Policy. As the slope of the site is less than 10% the 6.2metre height to the top plate applies. The basement contains off street parking for 11 cars plus a storage unit for each dwelling. The development only requires 8 off street spaces and there is no requirement for the storage units.

- c. Will compliance with the standard tend to hinder the attainment of the objects of the Act?

The objects of the Act include matters such as encouraging proper management and development of towns and villages for promoting the social and economic welfare of the community, promotion and coordination of the orderly and economic use and development of land.

The applicant argues that the design provides a lower density than the previous approval (6 rather than 7 dwellings), dwellings with high amenity having outlook over the communal area containing swimming pool and barbecue area, and that the height exceedance does not result in overshadowing or overlooking, and the building is consistent with other buildings in McIntyre Street. A comparison of heights of the current proposal and the previously approved development is attached ([Appendix D, part 1, part 2, part 3, part 4](#)).

It is considered the main cause of the building exceeding the height limit is the proposed basement area storage areas not required by Council's Policies.

- d. Is the objection well founded?

It is considered that the design could be modified to reduce the overall height which would likely result in the building complying or at least only marginally exceeding the height limit. (See "Building Height")

State Environmental Planning Policy 71 – Coastal Protection

The proposed development is identified as being within the Coastal Zone. Council is required to consider Clause 8 matters in the SEPP, as outlined below:

- (a) The aims of the Policy set out in Clause 2.

The proposal is generally consistent with the aims of the policy.

- (b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.

No impact on public access to coastal foreshore.

- (c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.

No opportunities to provide access as part of this application.

- (d) The suitability of development given its type, location and design and its relationship with the surrounding area.

The development has merit in terms of type and location, design issues and its relationship with the surrounding area. See "Height " below.

- (e) Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore.

No overshadowing of coastal foreshore.

- (f) The scenic qualities of the New South Wales coast, and means to protect and improve these qualities,

The proposal will not impact on the scenic qualities of the NSW coast.

- (g) measures to conserve animals (within the meaning of *Threatened Species Conservation Act 1995*) and plants (within the meaning of the Act), and their habitats,

No significant native vegetation exists onsite as it replaces an existing residential dwelling.

- (h) Measures to conserve fish (within the meaning of Part 7A of the *Fisheries Management Act 1994*) and marine vegetation (within the meaning of that Part), and their habitats,

No significant impacts. Stormwater from the site requires appropriate treatment.

- (i) Existing wildlife corridors and the impact of development on these corridors,

No significant impact.

- (j) The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

No significant impact.

- (k) Measures to reduce the potential for conflict between land-based and water-based coastal activities,

No conflict anticipated.

- (l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,

No known cultural places will be impacted.

- (m) Likely impacts of development on the water quality of coastal water bodies,

Provision needs to be made for treating stormwater. See below.

- (n) The conservation and preservation of items of heritage, archaeological or historic significance,

No known items of significance.

- (o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,

Not relevant to application.

- (p) Only in cases in which development application in relation to proposed development is determined:

- (i) The cumulative impacts of the proposed development on the environment. No significant cumulative impacts are anticipated,
- (ii) Measures to ensure that water and energy usage by the proposed development is efficient. The development Complies with BASIX.

Clause 16 of State Environmental Planning Policy 71 – Coastal Protection requires that the consent authority must consider stormwater disposal from the site and must not grant consent to a development application if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.

The development will require consideration of water harvesting and reuse on-site, together with opportunities for onsite infiltration.

SEPP 65 Considerations

State Environmental Planning Policy No 65 Design Quality of Residential Flat Buildings applies to residential flat buildings of 3 or more storeys containing 4 or more dwellings. SEPP 65 requires Council to consider the following matters:

Matter for Consideration	Comment
Principle 1: Context	The architectural design of the proposal will complement the amenity of the adjoining built environment and future developments in its surroundings.
Principle 2: Scale	See comments under " Building Height"
Principle 3: Built Form	The building design provides sound internal amenity, is well proportioned and will contribute to the streetscape. (See "Building Height")
Principle 4: Density	The proposed density is considered appropriate and Complies with DCP 22. It responds well to the existing medium to high-density area.
Principle 5:	The development is in compliance with

Resource, Energy and Water Efficiency	BASIX and designed for optimum use of passive and active solar design principles.
Principle 6: Landscape	The landscaping provided will reflect endemic species native to the Mid North Coast. The principle requires consideration of neighbour's amenity. See Setbacks and Overshadowing.
Principle 7: Amenity	The proposal has a northerly aspect with good sunlight, natural light with prevailing winds.
Principle 8: Safety and Security	All proposed units have balconies and decks that provide a high level of natural surveillance to public domain and internal pathways. The basement parking will be secure.
Principle 9: Social Dimensions	The proposed units will suit a socio-economic mix. The majority of purchasers are expected to be owner / occupants and investors.
Principle 10: Aesthetics	The proposed building is considered to be aesthetically acceptable, with its breezy design elements of rendered colour finishes, detailing and voids, balconies and recreation areas.

Development Control Plan (DCP) No. 22 – Local Housing Strategy (Urban Areas – 2003)

The proposal has been assessed in accordance with the provisions of DCP 22:-

STANDARD	REQUIRED	PROPOSED	DEVELOPMENT STANDAND Yes / No	COMPLIANCE PERFORMANCE OBJECTIVE Yes / No
Density	780m ²	1010m ²	Yes	Yes
Eastern Elevation Setbacks Level 1				
- front	5m with 1.5m encroachment	5 m	Yes	Yes
- side	900 mm – 1.8 m average	900mm - 1.8m Average	Yes	Yes
- rear	900 mm – 1.8 m	3m	Yes	Yes

	average			
Eastern Elevation Setbacks Level 2 Floor				
- front	5m with 1.5m encroachment	5m	Yes	Yes
- side	1.5 Minimum with average 3.3 m	1.5m min average above 4.1m	No	No
- rear	1.5m Minimum with average of 4.25m	3m min average above 4.1m	No	No
Carparking				
-Resident	6 covered spaces	11 covered spaces	Yes	Yes
-visitor	2 visitor spaces		Yes	Yes
-AS2890.1	Compliance with standard	Access difficulties	No	Yes
Private open space				
Unit 1	25m ² , 4m by 4m	32m ² , 4m by 4m	Yes	Yes
Unit 2	25m ² , 4m by 4m	28m ² , 4m by 4m	Yes	Yes
Unit 3	15m ² , > 2m in width for 80% of its area	25m ² , > 2m in width for 80% of its area	Yes	Yes
Unit 4	15m ² , > 2m in width for 80% of its area	25m ² , > 2m in width for 80% of its area	Yes	Yes
Unit 5	15m ² , > 2m in width for 80% of its area	25m ² , > 2m in width for 80% of its area	Yes	Yes
Unit 6	15m ² , > 2m in width for 80% of its area	25m ² , > 2m in width for 80% of its area	Yes	Yes
Land scaping	330m ²	332m ²	Yes	Yes
Height	6.2m to top	Up to 7.5m	No	No

	plate with 1.7m for rake ceilings	to top plate with 1.7m for rake ceiling		
Solar access	No part of adjoining residential building to be overshadowed for more than 2 hours between 9am and 3pm		No	No
Privacy	Avoid overlooking into adjoining private areas	Potential for overlooking of adjoining properties	No	No
Cut and fill	1.5m	700mm to 2.5m	No	Yes

* = see Planning Comment

Building Height

The development does not comply with the 2 storey height limit, or the 6.2 limit, specified in Kempsey LEP 1987 (See SEPP1 above).

Clause 24(2) of LEP1987 provides that the 6.2metres height limit does not operate to prohibit Council from consenting to the erection of a 2 storey building on land where, because of the local topography it is impracticable to erect a 2 storey building on the land in compliance with the 6.2metres limit.

Council recently amended its Height of Buildings Policy to provide guidelines on the circumstances where the topography makes compliance with the 6.2metres standard impracticable. The proposal does not comply with the Policy, as the natural ground level within the footprint has a slope of less than 10% (about 7%) and thus the building must have a maximum ceiling height of 6.2metres measured at the external top plate of the building.

The design of the building incorporates parapet external walls, with the roof line located at a lower level. The overall height of the building of 8metres complies with Council's Policy which allows a maximum overall height of 8.2metres.

The Development Application Council previously approval had a height of up to 6.9metres with up to 7.5metres currently proposed. ([Appendix E](#))

Setbacks

The building has been located on the eastern side of the lot to provide an access driveway from McIntyre Street on the western side, and also provides for an open space area containing a swimming pool and barbecue area in the rear half of the western setback area.

Consequently the building encroaches on the eastern side setbacks to a substantial extent at the first floor level. The minimum average required increases from 3.875metres (at the front of the eastern side and as the wall height increases the setback required increases) to 4.25metres. The proposed setback is 1.5metres at the front and steps back to 3metres at the rear. At no point does the setback achieve the minimum average required. ([Appendix F](#))

The rear setback could be considered as a secondary frontage. The DCP allows the setback to be less than 5metre provided it is consistent with the adjoining residences. The setbacks are not consistent with adjoining development. In the circumstances the appropriate setback is to be calculated as a rear setback. Under the DCP a setback minimum of 3metres with a minimum average of 4.25metres is required. The proposal has a setback of 3metres, with limited compensatory setback area.

In addition, the proposal includes a wall on the rear boundary (nil setbacks) with a height of 2.5metres and on the eastern side boundary with a height of 2.3metres.

Car Parking

The proposal provides 11 off street spaces in the basement area. Council code requires 8 spaces. Three of these spaces would be very difficult to access because of the required reversing and manoeuvring required. However as they are excess to Council's requirement, no objection is raised.

Cut and Fill

To accommodate the basement car park and storage area, approximately 2.5 metres (northern elevation) of cut will be required, which exceeds the maximum permissible amount of 1.5 metres. No objection is raised as the cut is to be retained by the building and thereby will not result in slope destabilisation.

Overshadowing

The adjoining property to the east will be subject to overshadowing from the development. The applicant has sought to demonstrate that overshadowing would be minimal. It should be noted that the adjoining balconies face west and would currently receive 3 hours sunlight between 9am to 3pm. The proposed development would reduce this to less than 1 hour.

Privacy

The proposal includes terrace areas on the eastern elevation located immediately opposite balconies on the adjoining development.

Public Exhibition

The initial proposal was advertised in accordance with Council's Advertising Policy with four (4) submissions having been received, one being confidential. [\(Appendix G, part 1\)](#) The submissions can be summarised as follows: -

Objection	Planning Comment
1 Does the development have provisions for off street parking.	1 The proposed development Complies with the Council's car parking code.
2 Objector has sentimental value to property does not wish the property to be redeveloped.	2 Development Consent T6-05-23 was granted 17 July 2005 for the demolition of the property and is not part of this application.
3 The proposed development will deprive my unit of sun, light, breeze and privacy. No overshadow diagram was not available at Kempsey.	3 The overshadow diagram demonstrates solar access is gained on the adjoining property to just before 1pm. See "Overshadowing"
4 The proposed swimming pool located at the rear of the proposal should have restricted hours of use between 8.00am and 10.00pm.	4 A condition could be imposed to restrict the pool use between the hours of 8.00am and 10.00pm.

Applicant's Submission

The applicant refers to the previously approved development application for this site (T6-04-187) and seeks to demonstrate that this current proposal has a reduction in a number a design impacts, such as a reduced number of units, changed vehicular access to McIntyre Street, increase in minimum setbacks and the proposal is supported by design verification in accordance with SEPP 65.

The applicant was advised of the number to matters that the proposal does not comply with under DCP22, but requested that the matter be reported to Council without modification.

REPORT IMPLICATIONS:

- ***Environmental***

The proposal does not require the removal of any substantial or significant vegetation. Impacts relate to the built environment, in particular, height, bulk and overshadowing.

- ***Social***

The proposal exceeds the height limit for the area, and does not comply with setbacks. These standards provide for social amenity in residential areas.

- ***Economic (Financial)***

No significant economic impact anticipated

- ***Policy or Statutory***

The application has been assessed under Section 79(c) of the Environmental Planning & Assessment Act 1979.

RECOMMENDATION:

A. That the applicant be invited to submit amended plans providing for:

- a) a reduction in height to comply with Councils Height of Buildings Policy**
- b) increased setback of the eastern and rear boundaries to comply with DCP22**
- c) redesign to provide for any fence on the boundary to not exceed 1.8metres in height**
- d) demonstration that solar access for adjoining dwellings is reasonably maintained**
- e) satisfactory design to provide visual privacy between the development and adjoining residences to the east.**

B. That if amended plan or written notice of the applicants intention to submit amended plans, is not received within 30 days of the applicant being notified of Council decision that the application be refused for the following reasons:-

- a) The building does not comply with clause 24 of Kempsey LEP1987 as the applicant has failed to demonstrate that compliance is impractical due to the topography of the site as specified in Council's Height of Building Policy.**

- b) The objection under SEPP1 fails to demonstrate that the standard is unreasonable in the circumstances
- c) The development does not comply with the side setbacks contained in DCP22
- d) The development would impact on the solar access for the dwellings in the adjoining land
- e) The development would result in significant overlooking of adjoining residential living areas
- f) Approval of the development would set an undesirable precedent for similar proposal in the locality and the Shire.

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R B Pitt
DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES